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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,
Plaintiff,
vs.
\$137,499.16, *in rem*,
Defendant

No 3:23-CV-00228-MO

MOTION FOR SPECIAL APPEARANCE,
MOTION FOR STAY, and MOTION FOR
EXTENSION OF TIME TO FILE
ANSWER

James F. Halley, appearing specially to protect Henry Koffie's 5th and 6th Amendment rights in regard to pending prosecutions in this Court and in the U.S. District Courts in Pennsylvania hereby moves for:

1. An order permitting him to appear specially, for purposes of the motions asserted here only for a stay only;
2. An order staying this civil forfeiture case pursuant to 21 U.S.C. § 881(i) and 18 U.S.C. §981(g)(2); and
3. In the event the court denies the motion for a stay, for an extension of time allowing Mr. Koffie to file an answer.

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1. Motion for Special Appearance.

Counsel moves for permission to make just a special appearance, for purposes of the motion for a stay, only. Mr. Koffie has pending prosecutions in this court (*United States v. Henry Koffie*, #3:17-CR-00291-MO-1), and in the Eastern and Western Districts of Pennsylvania (#17-cr-500-PD and #17-cr-204-CB, respectively). The undersigned counsel represents Mr. Koffie by court appointment in the Oregon prosecution (which is pending sentencing) and moves for permission to make a special appearance just for purposes of pursuing the motion for a stay. There are two reasons to permit a special appearance. First, counsel intends to retire from trial practice at the end of June and cannot take on the full scope of responsibilities in this case. Second, counsel is court appointed in the Oregon criminal case and it is not clear that the CJA will pay for work in this civil forfeiture case.

2. Motion for a Stay

The motion for a stay is made pursuant to 21 U.S.C. §881(i) and 18 U.S.C. §981(g)(2) on the grounds that litigation of this case while the criminal cases are pending will require Mr. Koffie to speak, jeopardizing his right to silence under the 5th Amendment, and his right to counsel under the 6th Amendment.

The statute on which the prosecution relies for jurisdiction, 21 U.S.C. §881 provides in pertinent part that:

The provisions of section 981(g) of Title 18 regarding the stay of a civil forfeiture proceeding shall apply to forfeiture under this section.

21 U.S.C. §881(i).

The referenced statute provides:

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(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that –

- (A) the claimant is the subject of a related criminal investigation or case;
- (B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and
- (C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

18 U.S.C. §981(g)(2).

All of the conditions in 981(g)(2) exist here. Mr. Koffie is the subject of related criminal cases, he has standing to assert a claim to the money seized, and he cannot continue to pursue that claim without jeopardizing his 5th Amendment right against self-incrimination in regard to those cases.

Mr. Koffie asks that this civil forfeiture case be stayed until resolution of his criminal cases. Mr. Koffie is pending sentencing in the Oregon case, but has not made an appearance in either of the Pennsylvania cases. A stay will not prejudice the prosecution since it has possession of the \$137,499.16 at issue in this case.

Claimant Koffie asks that the stay last so long as Mr. Koffie has appeals pending and until judgments in the Oregon and Pennsylvania cases are final.

3. Motion for an Extension of Time For Filing An Answer If The Court Denies The Motion for Stay.

If the court denies Claimant Koffie's motion for a stay, he moves in the alternative for an extension of the time for filing an answer to the complaint. Claimant Koffie's preferred extension would be to a date 30 days after the sentencing in his Oregon criminal case. The undersigned does not anticipate representing Mr. Koffie on appeal, and expects that new counsel will have been appointed for purposes of the appeal who

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may be able to file the answer in this case for Mr. Koffie. If the Court is not comfortable with an extension of that length, Claimant Koffie asks that the court set the due date for an answer to the complaint in this case at 30 days from the date of the order denying the requested stay.

This motion is supported by an accompanying declaration of counsel.

Respectfully submitted May 10, 2023

JAMES F. HALLEY, P.C.
/s James F. Halley
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Attorney for Defendant Henry Konah Koffie

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